

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/14/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000386

FILED: _____

STATE OF ARIZONA

CATHERINE E LEISCH

v.

LISA ANITA LABARRE

LISA ANITA LABARRE
7102 N 35TH AVE #3
PHOENIX AZ 85051-0000

BUCKEYE JUSTICE COURT
REMAND DESK CR-CCC

MINUTE ENTRY

BUCKEYE JUSTICE COURT

Cit. No. #CR00-00986MI

Charge: (83 Cnts.) FAILURE TO LICENCE

DOB: 07/14/49

DOC: 07/16/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement without oral argument and the Court has considered the record of the proceedings from the Buckeye Justice Court and the memoranda submitted by the parties.

Appellant was charged with 83 Counts of Failure to License a Dog. Appellant who appeared without counsel, filed several pretrial motions. The trial judge denied one Motion to Dismiss, granted the State's Motion to Quash a *subpoena duces tecum* issued for Ed Boks, without oral argument or hearing prior to trial. At the time scheduled for trial on May 10, 2001, the trial court heard oral argument on Appellant's Motion to Dismiss regarding the sufficiency of the charging documents. That Motion to Dismiss was denied. Apparently, the trial court never held an evidentiary hearing on Appellant's Motion to Suppress, filed March 12, 2001, based upon an alleged violation of her constitutional rights when Animal Control officers conducted a search of her property. Appellant was convicted of the charges and has filed a timely Notice of Appeal in this case.

There are many troubling issues presented in this appeal, not the least of which is the judge's demeanor during official court proceedings. Appellant alleges that "judge appeared quite flustered and irritated with (Appellant)."¹ It further appears from the allegations of Appellant and the admissions by Appellee in their memorandum that substantial proceedings were conducted off the record, or in "informal proceedings" as characterized by Appellee.²

The Court finds error in the trial court's failure to hold an evidentiary hearing on Appellant's Motion to Suppress, predicated upon an alleged violation of her constitutionally guaranteed rights. The Arizona Rules of Criminal Procedure clearly contemplate an evidentiary hearing where the Defendant has an obligation of establishing a "*prima facie* case that the

¹ Appellant's memorandum at page 4. See also, R.T. of May 10, 2001 at pages 5-14.

² Appellee's memorandum at page 4.

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evidence taken should be suppressed."³ The rules further provide that once the Defendant establishes a *prima facie* case, then the prosecutor "shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial."⁴ Appellant was not given an opportunity to present any evidence as the trial judge made clear that he would only hear oral argument on her Motion to Suppress.

The trial court's file reflects that Appellant's Motion to Suppress was filed on March 12, 2001. It was not scheduled for an evidentiary hearing at that time, and the court's file further shows in the case log in an entry dated April 2, 2001 that the Motion to Suppress was scheduled for oral argument only, immediately before trial.⁵ The transcript of the trial further reflects that the trial court only allowed oral argument on the Motion to Suppress immediately before trial, depriving Appellant of her right to present evidence and to require the State to satisfy its burden of proof as required by Rule 16.2(b)⁶: that the prosecutor prove the lawfulness of the acquisition of evidence that the prosecutor intends to use at trial.

Having found error, this Court's analysis is not complete without considering whether the error could be considered harmless error. The Arizona Supreme Court has previously defined fundamental error as an error that:

Reaches the foundation of the case or
takes from the Defendant a right essential
to his defense, or is an error of such
dimensions that it cannot be said it is
possible for a Defendant to have had a fair

³ Rule 16.2(b), Arizona Rules of Criminal Procedure.

⁴ Id.

⁵ See Record on Appeal, Docket, at pages 2-3.

⁶ Arizona Rules of Criminal Procedure.

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trial.⁷

In this case it is clear that Appellant's right to an evidentiary hearing on her Motion to Suppress was an error of such constitutional dimensions that this Court cannot say that it was possible for Appellant to have had a fair trial.

IT IS THEREFORE ORDERED reversing the judgments, convictions and sentences of the Buckeye Justice Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Buckeye Justice Court for an evidentiary hearing on Appellant's Motion to Suppress and a new trial.

⁷ State v. King, 158 Ariz., 419, 424, 763 P.2d 239, 244 (1988).
Docket Code 512